STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2011-69

August 2, 2011

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 285 and 288 of the Commission's Rules

ORDER ADOPTING AMENDMENTS TO RULES

WELCH, Chairman; VAFIADES and LITTELL, Commissioners

I. SUMMARY

In this Order, we adopt the amendments to Chapters 285 and 288 of our Rules that we proposed in the Notice of Rulemaking (NOR) issued on February 17, 2011 in this proceeding. The purpose of the rulemaking was to amend Chapters 285 and 288 of the Commission's Rules to clarify that all telecommunications carriers, including prepaid wireless carriers, are subject to the same required contributions to the Maine Telecommunications Access Fund (MTEAF) and the Maine Universal Service Fund (MUSF). In addition, the proposed amendments make clear that the requirements of both chapters apply to providers of interconnected voice over internet protocol (VoIP) telephone service. We adopt those amendments, but make clear in the Rules and this Order that, for the present, consistent with Resolves 2011, Ch. 69, §4, they apply only to interconnected VoIP providers that were paying into the Funds prior to October 27, 2010, and do not apply to other interconnected VoIP providers unless and until the Legislature requires such application in the future.

We also update several sections in both rules, as explained below.

We note that Chapter 69 of the 2011 Resolves also requires the Commission to examine a number of matters regarding the regulation of telephone utilities and telecommunications, including the "characteristics of provider-of-last-resort service and the obligations and support mechanisms, if any, that should accompany provider-of-last-resort service." Resolves 2011, Ch. 69, § 1(2)(B). The Commission is directed to file a "plan" for "necessary changes to law, rules or procedures and any other necessary actions." Resolves 2011, Ch. 69, § 1(4). We make no conclusions at this time about what that plan may contain with regard to continued support under these Rules and their governing statutes. Nevertheless, It is possible that further significant changes will be required for both of these Rules. We see no reason in the meantime, however, not to adopt the amendments proposed in this rulemaking, as we find they are reasonable and necessary to fulfill our obligations even during the interim period.

II. BACKGROUND AND PROCEDURAL HISTORY

On February 9, 2010, the Commission issued an Order in Docket No. 2009-263 designating TracFone Wireless, Inc. (TracFone) as an Eligible Telecommunications

Carrier (ETC) for the limited purpose of providing federally supported Lifeline service to low-income customers in Maine. TracFone is a provider of pre-paid cellular telephone handsets and a reseller of other carriers' cellular telephone service for use on the handsets it sells. In the course of processing TracFone's ETC application, the Commission became aware that TracFone had not filed reports with, or made payments to, the MUSF and MTEAF Administrator.

During the proceeding, TracFone responded in a data request that it had not made MTEAF or MUSF payments or filings because Chapter 285, Section 2(A) and Chapter 288, Section 4(C) required a carrier to "report the amount of its billed revenue and its uncollectible factor quarterly ..." and to make contributions of a percentage of the carrier's "intrastate retail revenues."

TracFone then quoted the definitions in each chapter of "intrastate retail revenue." Chapters 285, § 1(B) and 288, § 2(G) each define "intrastate retail revenue" as "revenue that a carrier bills for intrastate telecommunications services sold to end-user customers for use by those customers, less the carrier's factor for uncollectibles."

TracFone argued:

> TracFone, as a prepaid wireless carrier, does not bill its customers for services. Therefore, TracFone is not required by Chapter 288 to contribute to the MUSF. Section 4(C) further provides that "[a] carrier that must contribute to the Fund shall report the amount of its *billed* revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator. . . . TracFone is not required to contribute to the MUSF, and as such, is not subject to the MUSF reporting requirements. (emphasis added by TracFone)

TracFone provided essentially the same response about its failure to make payments or reports to the MTEAF under Chapter 285.

Thus, TracFone argued that because "intrastate retail revenue" is defined as revenue that a carrier "bills," and TracFone, as a pre-paid wireless carrier, does not "bill" its customers, TracFone is not subject to the reporting or contribution requirements of Chapters 285 and 288.

Although we granted the requested ETC status to TracFone, we also opened an investigation into TracFone's claim that it is exempt from the contribution requirements of Chapter 285 and 288. *See TracFone Wireless Corporation, Notice of Investigation for Failure to Make Required Payments to the Maine Universal Service and the Maine Telecommunications Education Access Funds*, Docket No. 2010-47, Notice of Investigation (Feb. 11, 2010).

In October 2010, we closed the investigation in Docket No. 2010-47 because we decided that it was preferable to address the issue of payment to the Funds by prepaid wireless carriers in a generally applicable rulemaking. *See Maine Public Utilities Commission, Amendments to Chapter 285 and 288 of the Commission's Rules*, Docket No. 2010-340, Notice of Rulemaking (October 26, 2010). However, on November 24, 2010, prior to the closing of the comment period for that Rulemaking, the Presiding Officer issued a procedural order stating "the Staff has determined that revisions to the draft rules are warranted and that it would be most efficient to suspend the rulemaking, the hearing, and the comment deadline on the current draft rules until revised draft rules can be prepared and issued for comment." The Commission closed the earlier rulemaking simultaneously with the issuance of the NOR in this rulemaking.

The present rulemaking addresses the same issues concerning the reporting and contribution obligations of prepaid wireless providers that were addressed in the earlier rulemaking. For those issues, the proposed amendments were virtually identical to those proposed in the earlier rulemaking. The Notice of Rulemaking (February 17, 2011) therefore proposed again to clarify that all prepaid carriers, including prepaid wireless carriers, providers, are subject to the reporting and contribution requirements of the Maine Telecommunications Education Access Fund (MTEAF) (Chapter 285) and Maine Universal Service Fund (MUSF) (Chapter 288).

This rulemaking also proposed, however, to amend Chapters 285 and 288 to make clear that the contribution and related requirements apply to interconnected VoIP providers. As explained in greater detail in Part VII below, shortly after the issuance of the NOR in 2010-340, the Federal Communications Commission (FCC) released a Declaratory Ruling holding that states may apply state universal service fund contribution requirements to the intrastate revenues of nomadic interconnected VoIP providers. *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, *Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, Declaratory Ruling (Rel. November 5,2010) (*FCC Nebraska- Kansas Nomadic VoIP Ruling*).

In addition, the NOR proposed to update several sections in both rules, as explained below.

Comments were filed by Telephone Association of Maine (TAM) and Verizon Wireless. A hearing was held on March 22, 2011. TAM testified at the hearing.

III. LEGAL AUTHORITY

A. MUSF

Title 35-A M.R.S.A. § 7104(1) mandates that this Commission "require telephone utilities to participate in statewide outreach programs designed to increase

the number of low-income telephone customers on the network through increased participation in any universal service program approved by the commission."[1] The Legislature has required that the Commission adopt rules to implement its mandate and has given the Commission the authority to "require providers of intrastate telecommunications services to contribute to a state universal service fund to support programs consistent with the goals of applicable provisions of [Title 35-A] and the federal Telecommunications Act of 1996, Public Law 104-104, 11 Stat. 56."[2] 35-A M.R.S.A. § 7104(3). Section 7104's requirements draw no distinction between pre-paid and post-paid (i.e., "billed") service providers. That section also draws no distinction among various technologies or methods of deliveries by which "intrastate telecommunications services" are provided, whether that delivery is by wire or wireless, or whether the delivery uses "traditional" means of transmission (time division multiplex or TDM) or interconnected VoIP.

B. MTEAF

Pursuant to the authority granted in 35-A M.R.S.A. §§ 7104 and 7104-B, the Commission may establish a telecommunications education access fund and "require a telecommunications carriers offering telecommunications in [Maine] and any other entities identified pursuant to subsection 8 [of § 7104-B][3] to contribute to the fund."[4] Just as in Section 7104, the mandates of Section 7104-B do not draw any

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[1] "Telephone utility is defined as "every person, its lessees, trustees, receivers or trustees appointed by any court that provides telephone service for compensation" in Maine. 35-A M.R.S.A. § 102(19). A "person" is defined as including "a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, trust, estate, [or] any other legal entity or natural person." *Id.* § 102(11). "Telephone service" is defined as "the offering of a service that transmits communications by telephone, whether the communications are accomplished with or without the use of wires."

[2] "Providers of intrastate telecommunications services" is defined to include "providers of radio paging service and mobile telecommunications services." 35-A M.R.S.A. § 7104(3).

[3] The "other entities" identified by 35-A M.R.S.A. § 7104-B "include[e], but are not limited to, cable television companies, Internet service providers or any other relevant business, to the extent that those entities offer services that provide a method of delivering 2-way interactive communications services comparable to those offered by telecommunications carriers." 35-A M.R.S.A. § 7104-B(8). Subsection 8 also states that "[t]he commission shall periodically examine the services provided and entities assessed a fee under this section. The purpose of the review is to ensure that the fees assessed under this section are competitively neutral." *Id.*

[4] Section 7104-B(1)(C) states that "'Telecommunications carrier' and 'telecommunications service' have the same meaning as set forth in 47 U.S.C. § 153,"

distinction between pre-paid and post-paid service providers or between various methods of delivery.

IV. COMMENTS

A. Comments by the Telephone Association of Maine

The Telephone Association of Maine (TAM) raised two major issues in its comments and in its testimony at the hearing. TAM argues first that the Commission should require the "recovery of delinquent payments from prepaid wireless providers." TAM's argument appears to be based primarily on the statutes authorizing or requiring the two Funds, 35-A M.R.S.A. §§ 7104 and 7104-B. TAM argues that these statutes have always required payment by prepaid wireless providers and that the Commission has an obligation to "enforce" the payment obligations of the statutes, apparently suggesting that if the rules are not consistent with the statute, the statutes must prevail. In support of this argument, TAM relies on *Maine School Administrative District No. 27 v. Maine Public Employees Retirement System*, 2009 ME 108, 983 A.2d 391.

TAM's comments next state "The other matter that was not addressed in the *NOR* that TAM believes is ripe for discussion is the expansion of the base of contributions for the MTEAF program." TAM argues that the MTEAF "is no longer a telephone related program but instead a purely broadband program. ... However it is still strictly telephone ratepayers who are forced to shoulder the entire tax burden for the MTEAF program.

TAM relies on the provision contained in subsection 8 of the MTEAF statute, which states:

> The commission shall periodically examine the services provided and entities assessed a fee under this section. The purpose of the review is to ensure that the fees assessed under this section are competitively neutral by including services provided by any entity, including but not limited to cable television companies, Internet service providers or any other relevant business, to the extent that those entities offer services that provide a method of delivering 2-way interactive communications services comparable to those offered by telecommunications carriers. In accordance with subsection 2, the assessment of fees on entities that provide services other than 2-way interactive communications services comparable to those offered by telecommunications carriers must be based on the entities' retail charges for delivering 2-way interactive communications, excluding interstate toll and interstate private line services, and may not be related to other services provided by the entity.

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the federal Telecommunications Act. 35-A M.R.S.A. § 7104-B(1)(C). These definitions are set forth in Part VI.A below.

35-A M.R.S.A. § 7104-B(8)

Subsection 2 states "the commission shall establish a telecommunications education access fund, referred to in this section as the 'fund,' and require all telecommunications carriers offering telecommunications services in the State and any other entities identified by the commission pursuant to subsection 8 to contribute to the fund." 35-A M.R.S.A § 7104-B(2).

As TAM's comments plainly recognize, these provisions are part of the statute governing the MTEAF. They have no applicability to the MUSF.

B. Verizon Wireless

The comments of Verizon Wireless state that it "does not have any comments regarding the underlying goal of including prepaid services within the ambit of the Funds." Instead, its comments address the "*manner* in which such fees are collected from prepaid wireless carriers and their customers" and whether their collection is "equitable as between prepaid and postpaid customers." Verizon Wireless recommends that collection should take place directly from consumers at the "point-of-sale" of prepaid wireless services. In urging this result, Verizon Wireless points to the model for collection in Maine of the surcharge for E911 services for prepaid wireless service. In support of such a result, Verizon Wireless argues that it is not possible for prepaid wireless customers to receive notice of "any contributions they may have made to the Funds" and that the Rules as amended "would create a differential as between how prepaid customers contribute to the Funds, and how postpaid customers contribute to the Funds." Verizon Wireless also states that it has only a single set of prices nationally for prepaid wireless service. Thus, if its cost structure were to include USF and similar charges from various states that charge different amounts for those contributions, its customers will be charged an average of such extra charges. This, says Verizon Wireless, means that customers purchasing service in those states that that have low or no extra charges will pay more than they should, and vice versa. Finally, Verizon Wireless states that collection should be on the basis of a flat per-transaction fee, not as a percentage of the carrier's intrastate retail revenue's sale price.

V. COMMISSION RESPONSE TO COMMENTS

A. TAM

TAM's comments apparently suggest that the Commission should "enforce" a present statutory requirement that prepaid wireless providers pay past-due contributions to the Funds. Even if TAM were correct that there is an existing statutory obligation (that trumps an arguably inconsistent rule), "enforcement" of a prior statutory

obligation is beyond the scope of a rulemaking proceeding.[5] The case cited by TAM, *Maine School Administrative District No. 27 v. Maine Public Employees Retirement System*, 2009 ME 108, does not appear to have applicability to the situation before the Commission. That case involved an enforcement action by the State Retirement System and not a rulemaking. It also involved a statute that on its face required certain payments. By contrast, the present situation involves statutes that do not themselves require payments, but only authorize or require the Commission to do so by rule.

TAM's argument with regard to "enforcing" the two statutes thus appears to assume the statutes themselves contain a self-implementing contribution requirement, and fails to recognize that they require the Commission to undertake rules that implement the statutes. Neither of the rules included revenue that was not "billed" in their definitions of "Intrastate Retail Revenue" subject to assessment. Fixing that omission was a primary purpose of this rulemaking.

TAM points out that the Commission, when promulgating Chapter 288, stated that assessments would apply to "the intrastate retail revenues of all interexchange carriers (IXCs), local exchange carriers (LECs), mobile telecommunications carriers, and paging providers, as permitted under Section 7104" and that "all providers of intrastate telecommunications services would be subject to assessment so that the base for contributions would be as broad as possible." *Maine Public Utilities Commission State Universal Service Fund for Local Exchange Carriers (Chapter 288)*, Docket No. 2001-230, Order Adopting Rule at 8, (July 2001),

Notwithstanding the Commission's intent, there is a colorable argument that neither rule applies to the prepaid portion of mobile telecommunications service revenues because the definitions in both rules of "intrastate retail revenue" included only "billed" revenues, and therefore that prepaid revenues are not "billed revenues." We decided in this rulemaking to fix the rule rather than potentially engage in extensive litigation.

Alternatively, TAM's comments can be interpreted as proposing that we make the amendments that require prepaid wireless providers to contribute to the Funds retroactive. To the extent that is a fair reading of TAM's request to enforce the statutes, as discussed with TAM at the rulemaking hearing, the Notice of Rulemaking did not propose to make any of the amendments retroactive. To make the amendments retroactive without notice to the public that the Commission was considering such action might well violate the rulemaking provisions of the Maine Administrative Procedure Act (APA), 5 M.R.S.A. §§ 8051-8064, and might deny due process to persons affected by the Rule. *See Public Utilities Commission, Proposed Amendments to Chapters 280,*

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[5] As noted in the NOR, we have no reason to believe that wireless providers other than TracFone have not been paying the correct amount of contributions, including from prepaid revenues. Thus, any enforcement action might lie only against TracFone, although further investigation (in an adjudicatory proceeding) of the extent that other prepaid wireless carriers have been paying, might also be necessary.

285 and 288, Docket No. 2002-687, Order Adopting Amendments to Rules at 3-6 (March 17, 2003) (declining to consider amendments proposed by commenters that were outside the scope of the rulemakings).

In its comments, TAM argues that potentially affected persons had sufficient notice simply because, in a rulemaking, the Commission forwarded notice of the rulemaking to the Secretary of State, who publishes notice in newspapers around the state. That notice provided the public only with notice of the fact that a rulemaking was taking place to amend the two Rules, but no person reading the NOR or the proposed amendments would ever guess that the Commission was considering making the proposed amendments retroactive because in fact the NOR made no such proposal.

TAM's other argument, that the Commission should act under 35-A M.R.S.A. § 7104-B(8) to "expand the base" of contributors, is applicable to the MTEAF and Chapter 285 only. This argument has the same scope and notice problems as the first argument discussed above. Subsection 8 of Section 7104-B requires the Commission to determine whether present non-contributing "entities offer services that provide a method of delivering 2-way interactive communications services comparable to those offered by telecommunications carriers," thereby suggesting a fact-finding requirement that is outside the scope of a rulemaking.

In addition, the NOR contained no notice that the Commission might consider adding other possible (and unidentified) telecommunications providers to those included as "telecommunications providers" that must contribute to the MTEAF. We do not accept TAM's argument that there was sufficient notice because "the Commission forwarded notice of the rulemaking to the Secretary of State, who published notice in newspapers" for the same reason as that described above in connection with its other argument that the Commission, in this rulemaking, should collect allegedly "past-due" contributions.

B. Verizon Wireless

We cannot adopt the proposal by Verizon Wireless to impose a "point-of-sale" collection system for the MUSF and MTEAF. First, this proposal is well outside the scope of this rulemaking or any of the proposed rule amendments. It therefore presents the same notice problem that exists with TAM's proposal to collect allegedly past-due amounts from prepaid wireless providers. Second, such a collection system is fundamentally different from the present contribution and collection structure under the Rules. That structure requires carriers and other telecommunications providers – not third party retailers or customers of carriers – to pay into the Funds. Third, and most importantly, the Commission has no authority to require retail stores to collect surcharges and pay them into the Funds. Under Sections 7104 and 7104-B, the Commission may or must require telephone utilities and other specified telecommunications providers to pay into the Funds, but it has no authority to require retail stores or other third-party sellers to make such payments.

While we cannot consider Verizon Wireless's proposal for the reasons stated above, we will comment on some aspects of the proposal and some of the statements Verizon Wireless has made about the existing Rules and the changes that Verizon Wireless believes we proposed. Verizon Wireless appears to be concerned that the Rules require very different treatment of prepaid wireless customers than all other customers. In fact, the Rules do not require substantially different treatment except with respect to the matter of notice to customers of a surcharge. Many of the differences claimed by Verizon Wireless in fact result from its own practices. In addition, Verizon Wireless's proposal for "point-of-sale" collection would create even greater differences.

Not all of Verizon Wireless's observations about the pre-amendment and amended Rules are accurate. First, its comments state that under the Rules, all Maine telecommunications customers, other than prepaid wireless customers, "are entitled" to receive notice of any surcharges. Second, the comments claim that carriers providing postpaid service contribute to the Funds based on Maine intrastate revenues and "would" surcharge customers to recover those contributions, but that prepaid wireless carriers "would not be able to pass along these costs as a line-item to customers because the customers do not have a monthly bill." In fact, nothing in the Rules either prior to or after this rulemaking requires postpaid telecommunications providers to impose a surcharge. In each Rule, a surcharge is permitted, but not required.[6] Chapter 285, §3(A); Chapter 288, §5(B)(1). Nothing in the pre-amendment or amended Rules prevents prepaid wireless providers from imposing a surcharge; nothing prevents them from developing a method with retailers from imposing a surcharge.

Verizon Wireless is correct that the amended Rules do not require prepaid wireless carriers to provide their customers with notice of a notice of surcharge or of contributions paid by the carrier, but nothing prohibits prepaid wireless carriers from doing so if feasible, e.g., in the case of a direct internet or telephone sale by the carrier itself. Under the amended Rules, we have exempted prepaid wireless carriers for the very reason that Verizon Wireless states: there is normally no written bill or other writing presented to the customer at the time of sale. Verizon Wireless is also not correct that customers other than prepaid wireless customers must always receive notice of surcharges. Under Chapter 288 (MUSF), only "carriers subject to the jurisdiction of the Commission" are subject to the provision governing surcharges, the amount of the surcharge ("not to exceed the Revenue Percentage established by the Fund Administrator") and notice of the surcharge. Chapter 288, §5(B)(1). Thus, the provision does not apply to customers of non-regulated carriers, including wireless carriers.

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[6] Both Rules limit the amount of the surcharge to the percentage paid by contributing carriers. The USF Rule, however, applies the limitation (and the notice requirement) only to "carriers subject to the jurisdiction of the Commission." Chapter 288, §5(B). The Chapter 288 limitation therefore does not apply to either prepaid or postpaid wireless carriers. The Chapter 285 does apply to wireless carriers, but, in the case of prepaid wireless providers, there is no notice requirement.

Wireless carriers (prepaid and postpaid) therefore may recover USF contributions through a surcharge that is not subject to a notice requirement or the percentage limitation applicable to carriers subject to the Commission's jurisdiction. By contrast, the parallel provision in the MTEAF Rule, Ch. 285, § 3(A) applies to all contributors to the MTEAF (whether public utilities or not). Contributors "may" impose a surcharge, but if they do, the percentage amount of the surcharge cannot exceed the contribution percentage. Nothing requires any contributor to impose an MTEAF surcharge.

Other than by the use of surcharges, MTEAF and MUSF contributors may recover amounts they must pay into the Fund in any manner they choose, including as a cost they recover as part of the retail price charged to consumers. As noted above, Verizon Wireless states that it establishes a single set of national prices. Thus, it claims that if it includes different charges from various states in its nationally averaged prices, customers purchasing service in states that that have low or no extra charges will pay more than they should, and vice versa. How Verizon Wireless prices from state to state is a matter entirely within its control. Nothing in the Maine Rules (and, most probably, those from any other state) requires Verizon Wireless to average its pricing. Numerous carriers with a regional or national presence have managed to have different pricing in different states, through surcharges or by other means.

Finally, Verizon Wireless' proposal states that collection should be on the basis of a flat per-transaction fee, not as a percentage of the carrier's intrastate retail revenue's sale price. The reason for this is not clear beyond the fact that the surcharge for prepaid wireless customers is on that basis. Under the MTEAF and MUSF Rules, carriers have always been assessed a percentage of their intrastate retail revenues. We continue to believe that assessments and surcharges (if any) should be a proportional as possible to revenues. In addition, charging prepaid wireless customers a flat fee would create more disparity between different groups of customers who are subject to surcharges.

VI. DISCUSSION OF AMENDMENTS FOR PREPAID SERVICE

The modifications discussed below make clear that pre-paid telecommunications providers (wireline and wireless) will be treated in the same manner as other telecommunications providers for the purpose of reporting and contributions to the Funds. Pre-paid mobile telecommunications providers will be required to contribute to the Funds using the same method to calculate their contributions as other wireline and mobile telecommunications carriers. We have no reason to believe wireline providers of prepaid service have not reported and paid contributions on prepaid revenues. We also recognize that most wireless providers also do so. Nevertheless, we found it necessary to open this rulemaking (in Docket No. 2010-340) because of the arguments made by TracFone.

A. Chapter 285 (MTEAF)

1. Section 1: Definitions

As proposed in the NOR, we amend the definition of "Intrastate Retail Revenue" in Section 1(E) of the Rule (previously Section 1(B)) to make clear that reportable and assessable revenue is all revenue that a carrier receives from intrastate telecommunications services sold to end user customers, regardless of whether the carrier sends bills to customers, while still allowing carriers that have uncollectible revenues to deduct their uncollectible factors.

2. Section 2: Assessment

We amend Section 2(A) of the Rule to clarify that the assessment applies to all intrastate retail revenue regardless of the method of collection.

We amend Section 2(C)(1) of the Rule to clarify that the assessment of those charges or rates of an IXC that apply on an unseparated basis to both intrastate and interstate service provided in Maine, is applicable regardless of a carrier's method of revenue collection.

We amend Section 2(E)(1) of the Rule to clarify that assessments apply to the intrastate portion of those retail charges or rates of a mobile telecommunications provider, including a paging provider, that apply on an unseparated basis to both intrastate and interstate service provided in Maine, regardless of a carrier's method of revenue collection.

3. Section 3: Recovery of Contributions from Retail Customers

We amend Section 3(A) of the Rule to clarify that a carrier's contribution to the fund may be recovered from customers through a surcharge without regard to a carrier's revenue collection method and to make clear that the surcharge applies only to services provided by the carrier or provider, and not to other surcharges that may be collected from customers.

We amend Section 3(B) of the Rule to clarify that its surcharge application provisions apply to all carriers that use any of the interstate-intrastate allocation methods described in Section 2 of the Rule, without regard to a carrier's revenue collection method.

We amend Section 3(C) of the Rule to clarify that any surcharge collected from customers to recover MTEAF fees be identified on customer bills only if the carrier provides a bill (including electronic bills) to the customer.

B. Chapter 288 (MUSF)

1. Section 1: Definitions

We amend the definition of "Intrastate Retail Revenue" in Section 2(G) of the Rule to make clear the such revenue is all revenue that a carrier receives from intrastate telecommunications services sold to end user customers for use by those customers, while allowing carriers that have uncollectible revenues to deduct their uncollectible factor.

2. Section 4: The Fund

We amend Section 4(C) to limit the provision to reporting of revenues. (The present reporting requirement is stated in the second sentence of subsection C, in between two sentences that presently describe the contribution requirement.) We propose to move the contribution requirement to a new subsection D.

We amend the reporting requirement retained in subsection C to clarify that a carrier must report the total amount of all revenue received, regardless of whether the carrier sends a bill to customers. The proposed amendment accomplishes this through the use of the defined term "Intrastate Retail Revenue," which, as discussed above, we also propose to amend. Proposed revised Section 4(C) also states that carriers that have uncollectible revenues also shall report them along with their revenues. We also propose to delete present subsection I, as it contains the same reporting requirement as that stated in present (and proposed) subsection C.

We adopt a new subsection D that will be limited in scope to the Contribution Requirement. Its language is derived from the first and third sentences of present subsection D.

We amend Section 4(E)(1) of the Rule (presently 4(D)(1)) to clarify that the assessment applies to the intrastate portion of those retail charges or rates of an IXC that apply on an unseparated basis to both intrastate and interstate service provided in Maine, regardless of a carrier's method of revenue collection.

We amend Section 4(G)(1) of the Rule (presently 4(F)(1)) to clarify that the assessments shall apply to the intrastate portion of those retail charges or rates of a mobile telecommunications provider (including a paging provider) that apply on an unseparated basis to both intrastate and interstate service provided in Maine, regardless of a carrier's method of revenue collection.

We amend Section 4(I) of the Rule (presently 4(G)(1)) to clarify that the quarterly contribution that each carrier must contribute to MUSF is equal to all of that carrier's Intrastate Retail Revenue, as defined in Section 1(J). That revenue is therefore subject to assessment regardless of whether the carrier sends a bill to customers. Under the definition, carriers that have uncollectible revenues may deduct their uncollectible factor.

3. Section 5: Identification and recovery of Contributions by Contributing Carriers

We amend Section 5(A) of the Rule to clarify that contributions that a carrier makes to the MUSF must be identified on customer bills only if the carrier provides a bill or other statement of charges (written or electronic) to the customer.

We amend Section 5(B)(2) of the Rule to clarify that the surcharge applies to all intrastate retail telecommunications services provided to a retail customer, or any designated subset of those services, but shall not apply to surcharges for Enhanced 911, for the Maine Telecommunications Education Access Fund, or for similar funds that are not part of a carrier's retail service offerings, regardless of a carrier's method of revenue collection.

We amend Section 5(B)(3) of the Rule to clarify that its surcharge application provisions apply to all carriers that use any of the interstate-intrastate allocation methods described in Section 4 of the Rule, without regard to a carrier's revenue collection method.

We amend Section 5(B)(4) to clarify that any surcharge collected from customers to recover MUSF fees be identified on customer bills only if the carrier provides a bill to the customer.

VII. AMENDMENTS FOR INTERCONNECTED VOIP SERVICE

We adopt the amendments proposed in the NOR that address contributions by interconnected VoIP carriers. We also add provisions to both Rules that make clear that the provisions apply only to interconnected VoIP carriers that had been contributing to the Funds prior to October 27, 2010 and to other interconnected VoIP carriers only if the Legislature takes action that would make such application lawful. At present, application of the contribution requirements to other interconnected VoIP carriers appears to be prohibited because of the enactment by the Legislature this year of Chapter 69 of the Resolves. Section 4 of that Resolve states:

> **Sec. 4 Rescinded order. Resolved:** That, notwithstanding any contrary provision of law in effect on the effective date of this resolve, the commission may not regulate interconnected voice over Internet protocol service as a telephone service under the Maine Revised Statutes, Title 35-A unless otherwise directed by law enacted after the effective date of this resolve and any commission order that is inconsistent with this prohibition is void. It is the intent of the Legislature in establishing this prohibition that interconnected voice over Internet protocol service be treated and providers of such service conduct themselves in accordance with those requirements and practices that existed prior to the issuance by the commission of its October 27, 2010 order, in docket number 2008-421, including but not limited to requirements or practices relating to the payment of fees, assessments or other charges, the filing of reports and any other regulatory or procedural matters.

> Notwithstanding any limitation that the findings in section 1, subsection 1, paragraph C might impose on the commission as a result of the regulatory effects of this section, the commission may, free of any such limitations, examine and develop recommendations regarding interconnected voice over Internet protocol service when developing its plan pursuant to section 1.

Resolves 2011, Ch. 69, §4 (effective June 9, 2011)

The only interconnected VoIP carriers that the records of the Funds Administrator show were making contributions to the Funds prior to October 27, 2011 are Time Warner Cable Information Services (Maine), LLC (Time Warner) and Comcast IP Phone II, LLC (Comcast).[7] Both of these carriers are fixed interconnected VoIP providers. Thus, the several provisions, contained in the Rules and discussed below that apply to nomadic interconnected VoIP providers, do not apply to Time Warner and Comcast. No nomadic interconnected VoIP carrier contributed to the Funds prior to October 27, 2011. Accordingly, the provisions that would apply only to nomadic interconnected VoIP carriers have no immediate effect, but we adopt them so that they can apply immediately in the event that the Legislature takes further action that would make their applicability lawful. The alternative of not adopting them would require an additional rulemaking and a potentially lengthy delay if the Legislature were to take action that would permit or require such application.

A. Application of Chapters 285 and 288 to interconnected VoIP Service

As noted above, the FCC in the *Nebraska- Kansas Nomadic VoIP Ruling* held that states may apply state universal service fund contribution requirements to the intrastate revenues of nomadic interconnected VoIP providers.

The FCC first noted that in 2006, it had required interconnected VoIP providers (fixed as well as nomadic) to contribute to the federal Universal Service Fund because "interconnected VoIP providers, like other contributors, 'benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN [Public Switched Telephone Network].'" The FCC further found that the requirement would promote "competitive neutrality." *FCC Nebraska- Kansas Nomadic VoIP Ruling*, ¶ 6 and n. 17.

The FCC rejected arguments, and declined to follow the reasoning by the federal Court of Appeals for the Eighth Circuit (upholding a preliminary injunction issued by the federal District Court against the Nebraska Public Service Commission) in *Vonage Holdings Corp. v. Nebraska Public Service Comm'n*, 564 F.3d 900, 905 (8th Cir. 2009), that nomadic interconnected VoIP service cannot be separated into

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[7] *See also* Memorandum of April 24, 2006 from Commission staff stating that Time Warner had agreed to continue to pay MUSF contributions. This memorandum was filed in *Time Warner Cable Information Services (Maine) LLC, Request to Withdraw Tariff*, Docket No. 2005-227.

interstate and intrastate usage.[8] The FCC itself had ruled, for the purpose of federal USF obligations, that such separation was possible through the use of a "safe harbor" mechanism, which the FCC had established for interconnected VoIP providers in the 2006 *Interim Contribution Methodology Order*, 21 FCC Rcd at 7536–49, paras. 34–62.[9]

> The FCC concluded that it:
>
> should not preempt the imposition of such requirements on nomadic interconnected VoIP providers so long as (1) the relevant state's contribution rules are consistent with the Commission's universal service contribution rules and (2) the state does not apply its contribution rules to intrastate interconnected VoIP revenues that are attributable to services provided in another state.

FCC Nebraska-Kansas Nomadic VoIP Ruling, ¶11.

Although the question presented to the FCC by the Nebraska and Kansas commissions was whether states could require *nomadic* interconnected VoIP providers to contribute to a state universal service fund, based on intrastate revenues, nothing in the FCC declaratory ruling draws any distinction between the nomadic and fixed interconnected VoIP service. Throughout the Ruling, the FCC nearly always refers only to "interconnected VoIP" service. The FCC had previously required both fixed and nomadic providers to contribute to the federal Universal Service Fund; and, in the *Interim Contribution Methodology Order*, had specifically ruled that Interconnected VoIP providers that could determine the jurisdictional nature of their calls (i.e., fixed interconnected VoIP providers) could use an "actual revenue allocation."[10] Accordingly, we find that, under the current state of federal law, we may promulgate rules that require both fixed and nomadic interconnected VoIP carriers to contribute to the Funds.

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[8] In upholding the preliminary injunction, the Court of Appeals nevertheless held that it was a "reasonable interpretation" of the FCC order upheld in *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007) that the FCC had "'determined, given the impossibility of distinguishing between interstate and intrastate nomadic interconnected VoIP usage, it must have sole regulatory control,' and 'while a universal service fund surcharge could be assessed for intrastate VoIP services,' the [FCC]must 'decide if such regulations will be applied.'" *FCC Nebraska-Kansas Nomadic VoIP Ruling* at ¶ 9.

[9] The FCC also permits a contributor to "conduct a traffic study" or, for those Interconnected VoIP providers that can determine the jurisdictional nature of their calls, to use an actual revenue allocation. *Interim Contribution Methodology Order*, 21 FCC Rcd at 7547 ¶ 57, 7544 ¶ 52.

[10] *See* footnote 9 above.

Both fixed and nomadic interconnected VoIP providers are telecommunications providers within the meanings of the Maine statutes governing the MTEAF and MUSF, and neither statute can be read as implying a distinction between fixed and nomadic interconnected VoIP providers. Under 35-A M.R.S.A § 7104-B(2), the obligation to contribute to the MTEAF applies specifically to "telecommunications carriers offering telecommunications services in the State." Section 7104-B(1)(C) (MTEAF) states that "'Telecommunications carrier' and 'telecommunications service' have the same meanings as set forth in 47 United States Code, Section 153."

The 1996 TelAct defines a "Telecommunications carrier" as:

> any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 [of Title 47]) ...

47 U.S.C. § 153(44).

"Telecommunications Service" is:

> the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

47 U.S.C. § 153(46).

"Telecommunications" are defined as:

> the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

47 U.S.C. § 153(43).

The MTEAF statute also states that the Commission may require "any other entities identified by the commission pursuant to subsection 8 to contribute to the [MTEAF]." 35-A M.R.S.A § 7104-B(8).[11] As discussed above in response to comments by TAM, we do not take any direct action under subsection 8 in this rulemaking, but the policy behind the provision lends support to our inclusion of interconnected VoIP providers under both of the Rules.

For the MUSF, 35-A M.R.S.A § 7104(2) requires the Commission to adopt rules and "may require providers of intrastate telecommunications services to contribute to a state universal service fund." No cross-references to federal definitions of "Telecommunications carrier" and "telecommunications service" are found in the Maine USF statute, but subsection 3(B) of Section 7104 requires Commission rules to be "consistent with the goals of the federal Telecommunications Act of 1996."

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[11] Subsection 8 is quoted in full above. Irt requires the Commission to engage in a periodic examination of services entities to "ensure that the fees assessed ... are competitively neutral" among all entities offering two-way communications services.

For the purpose of requiring reporting and contributions to the MTEAF and MUSF, we therefore include all interconnected VoIP providers, both nomadic and fixed, definitions of telecommunications carriers in Chapters 285 and 288. [12] This inclusion, of course, is subject to the 2011 Resolve, Ch. 69, §4, as discussed in more detail above. For the present, the Rules provide that their requirements apply only to interconnected VoIP providers that were reporting and contributing prior to October 27, 2010.

The *FCC Nebraska-Kansas Nomadic VoIP Ruling* addressed one further issue, cautioning that states that assess nomadic interconnected VoIP providers must avoid assessing intrastate revenues that are also assessed by other states:

> As long as states have a policy against collecting universal service assessments with respect to interconnected VoIP revenue that an interconnected VoIP provider has properly allocated to another state under that state's rules, we do not preempt states from imposing universal service contribution requirements on future intrastate revenues of nomadic interconnected VoIP providers. This issue of duplicative assessments is not one of first impression for the states. Concern about potential double billing of intrastate revenues exists in the wireless context as well, because a wireless customer's principal place of use may be different from his or her billing address. Evidence in the record indicates that states have successfully resolved allocation of wireless intrastate revenues for purposes of state universal service contributions without the need for Commission intervention. In fact, an allocation of revenues among the states modeled on the Mobile Telecommunications Sourcing Act, but adapted to provide interconnected VoIP service providers a means of determining a customer's primary place of use of service, could be a method of ensuring against double assessments in the context of interconnected VoIP. [FCC footnote 58]

FCC Footnote 58 states in part:

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[12] In 2007, the Nebraska PSC found that VoIP providers met the definitions in the Nebraska rules of "telecommunications" and "telecommunications services" in its ruling that interconnected VoIP providers must contribute the Nebraska Universal Service Fund." *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund,* Application No. NUSF-1, Progression Order No. 18, Opinion and Findings (April 17, 2007). The Nebraska definitions in the rules are substantively identical to those in the Nebraska statute and in the 1996 federal Telecommunications Act. Neither the Nebraska nor the federal definitions of "telecommunications" or "telecommunications service" specifically refer to interconnected VoIP. The *FCC Nebraska-Kansas Nomadic VoIP Ruling* did not comment on the Nebraska PSC's findings.

> We note that to the extent an interconnected VoIP provider cannot determine a customer's primary place of use, it would be reasonable if a state allowed the provider to use a proxy for the primary place of use, such as the customer's registered location for 911 purposes. See 47 C.F.R. § 9.5(d).

FCC Nebraska-Kansas Nomadic VoIP Ruling ¶ 21 (footnote 57 omitted); n. 58

The FCC regulation cited in footnote 58, 47 C.F.R. § 9.5, requires interconnected VoIP providers to provide customers with E911 service and to "transmit all 911 calls, as well as ANI and the caller's Registered Location for each call" to the PSAP or other "appropriate local emergency authority that serves the caller's Registered Location ...." Section 9.5(d) requires interconnected VoIP providers to obtain from customers "the physical location at which the service will first be utilized" and to provide one or more methods of updating the Registered Location. 47 C.F.R. § 9.5(b) and (d).

Both Nebraska and Kansas have decided to use customer 911 addresses as the means for determining whether nomadic interconnected VoIP intrastate revenues are, respectively, Nebraska or Kansas intrastate revenues. *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund,* Application No. NUSF-1, Progression Order No. 19, Opinion and Findings (January 25, 2011); *In the Matter of the Investigation to Address Obligations of VoIP Providers with Respect to the KUSF*, Docket No. 07-GIMT-432-GIT, Implementation Order (Sept. 22, 2008) at 8.

While arguments could be made that we should use some other address or primary place of use (such as "service location" or billing address) for this determination, we see no clear superiority of these other means of designation. Uniformity among the states is the best way to avoid multiple assessments by states. Nebraska and Kansas have pioneered the assessment of interconnected VoIP providers for USF purposes, and we see no reason to use a different method than used by those states or than suggested by the FCC. Accordingly, new subsection F(2) of Section 2 of Chapter 285, and new subsection H(2) of Section 4 of Chapter 288, both use E911 addresses for determining a customer's primary place of use for the purpose of determining whether intrastate revenues from that customer are Maine intrastate revenues.

B. Changes to Chapter 285 (MTEAF) Related to interconnected VoIP

1. Section 1: Definitions

We add definitions of "Interconnected Voice over Internet Protocol (interconnected VoIP)" and "Nomadic Interconnected Voice over Internet Protocol Service" in Section 1(D) and 1(J) respectively. The "interconnected VoIP" definition is

identical to the federal definition in 47 C.F.R § 9.3. The definition is also the same as that contained in 25 M.R.S.A. § 2927(12), which applies to contributions to the E911 Fund, but which omits the phrase "internet protocol-compatible CPE" that is in the federal definition. We include that phrase not only because it is in the federal definition, but because such CPE is in fact necessary to use interconnected VoIP.

There is no federal definition of "nomadic" interconnected VoIP, although the FCC Declaratory Ruling stated "A fixed interconnected VoIP service can be used at only one location, whereas a nomadic interconnected service may be used at multiple locations." *FCC Nebraska-Kansas Nomadic VoIP Ruling* at ¶3. The definition we adopt in Section 1(I) is based on the New York statutory definition in Gen. Bus., Article 22-A, § 349-b-1. We have made one modification of the New York definition. That definition refers to an "internet connection." We use the term "broadband connection" because broadband is necessary for any interconnected VoIP and because it is possible, under some circumstances, to access interconnected VoIP directly through a broadband connection, even if not through the internet.

We have adopted a new Section 1(B) to add a definition of "E911 Address" for the reasons stated in Part VI.A above.

2. Section 2

Section 2 governs "Assessments." Section 2(E) presently provides a method for the "determination of intrastate retail revenues from jurisdictionally mixed charges of mobile telecommunications carriers." We amend this subsection so that it will also apply to interconnected VoIP providers. The "default method" for mobile carriers has been to use the intrastate percentage of the mobile carrier "safe harbor" methodology of the FCC. We use the FCC safe harbor for interconnected VoIP providers. We note that the interconnected VoIP safer harbor differs from the safe harbor for mobile carriers. The present "interim" FCC safe harbor for interconnected VoIP is 64.9% interstate and 35.1% intrastate. *See FCC Nebraska-Kansas Nomadic VoIP Ruling* ¶ 7.

Under Section 2(E)(3), interconnected VoIP providers, like mobile carriers, may also apply to use an alternative allocation method.

New Section 2(F) provides a methodology for determining the state (Maine or some other state) to which intrastate revenues should be assigned. The provision applies to both mobile carriers and to nomadic interconnected VoIP providers. Neither Chapter 285 nor Chapter 288 presently have such a provision for mobile carriers, but the *FCC Nebraska-Kansas Nomadic VoIP Ruling* discussed the use of federal "sourcing rules" for mobile carriers in the context of suggesting a method for interconnected VoIP providers. The FCC's discussion supports our view that such a provision for mobile carriers in Maine would be useful. The default method for mobile carriers is described in new Section 2(F)(1) and uses federal and Maine "sourcing rules" to determine the customer's "primary place of use." *See* 4 U.S.C. § 117(b) (Mobile

Telecommunications Sourcing Act); 36 M.R.S.A. § 2556. The direct cross-reference proposed Section 2(F)(1) is to the Maine provision in Title 36.

New Section 2(F)(2) provides a default method for nomadic interconnected VoIP providers. Like the provision for mobile carriers, this provision is intended to determine the "primary place of use" of nomadic interconnected VoIP customers. As discussed in detail in Part VI.A above, the FCC suggested the use of E911 addresses for this purpose. Both Kansas and Nebraska use E911 addresses for this determination, and we will use it in both Chapters 285 and Chapter 288.

We limit the use of E911 addresses for customer location determination to *nomadic* interconnected VoIP providers. Fixed interconnected VoIP providers are fully capable of determining service locations. Nothing prohibits any mobile or interconnected VoIP provider from proposing an alternative method for identification of Maine customer locations.[13]

C. Changes to Chapter 288 (MUSF)

1. Section 1: Definitions

We add definitions of "Interconnected Voice over Internet Protocol (interconnected VoIP)" and "Nomadic Interconnected Voice over Internet Protocol Service" in Section 2(H) and 2(O) respectively. See the discussion of the identical provision that we add to Chapter 285, Section 1(D) and 1(J), at Part VI.B.1 above.

We adopt a new Section 1(B) to add a definition of "E911 Address" for the reasons stated in Parts VI.A and VI.B.1 above.

2. Section 4

As in the case of Chapter 285, § 2(E), Section 4(G) of Chapter 288 presently provides a method for the "determination of intrastate retail revenues from jurisdictionally mixed charges of mobile telecommunications carriers." We adopt the same amendments to this subsection as we have for Chapter 285, § 2(E) so that it will also apply to interconnected VoIP providers. See discussion above at Part VI.B.2.

Similarly, new Section 4(H) is identical to new Section 2(F) of Chapter 285. It provides methods for both mobile carriers and nomadic interconnected VoIP providers to determine whether their intrastate revenues are Maine intrastate revenues.

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[13] Because proposed Section 2(E) applies only to mobile and nomadic interconnected VoIP providers, the "alternative method" provision in paragraph 3 would not apply to a fixed interconnected VoIP provider. Nothing, however, prevents a fixed provider from using the waiver provision of Section 5 of the Rule.

VIII. OTHER CHANGES

A. Chapter 285

We have added definitions of "intrastate interexchange carrier (IXC)," "local exchange carrier" and "local exchange service" in Section 1(F), (G), and (H) respectively. The first two of these are the same as the definitions that are presently in Chapter 288. The definition of "local exchange service" is new to both Chapters. All three terms are used in both Chapters.

We add the word "telecommunications" to the definitions in Section 1(I) (Mobile Telecommunications Carrier) and 1(M) (Radio Paging Service Provider) to describe both as telecommunications carriers, i.e., entities that, under 35-A M.R.S.A. § 7104-B(2) must contribute to the MTEAF.

We have made various changes to Section 4(C) to clarify that provision. In the "Alternative Allocation Method" of Section 2(C)(3), we have deleted the reference to "minutes of use" because that is the measure already described in the default method stated in Section 2(C)(2).

We have added the phrase "including a provider of interconnected VoIP service" to the definition of "telecommunications carrier." See discussion in Part VI.A above.

B. Chapter 288

We adopt a definition of "local exchange service" in proposed new Section 2(M). The term is used in other definitions and elsewhere in Chapter 288. As noted above, we have also proposed to add this definition to Chapter 285.

We adopt new definitions of "telecommunications," "telecommunications carrier," and "telecommunications service" in Section 2(R), (S), and (T). These terms are used in other definitions and elsewhere throughout Chapter 288. The definition of "telecommunications carrier" includes the phrase "including a provider of interconnected VoIP service." See discussion in Part VI.A above. These definitions are otherwise identical to existing definitions in Chapter 285 and to the definitions in federal law, 47 U.S.C. § 153(43) (44) and (46). As discussed above, the MTEAF statute, 35-A M.R.S.A. § 7104-B, cross-refers to the federal definitions.

We have made several changes to Section 3, which governs applications by local exchange carriers for funding by the Maine Universal Service Fund. The primary changes are to subsections B and C. They are intended to simplify and update those provisions, which were designed primarily to address initial applications at a time when incumbent LECs were required by 35-A M.R.S.A. § 7101-B to reduce access rates (and, therefore, revenues) substantially. In subsection C(1), we have changed the

time span between a required rate proceeding and new or changed funding from six months to one year.

We have amended Section 4(I) to make clear that the Maine Universal Service Fund provides support for activities other than high-cost ILECs and to specify those activities.

We have amended Section 4(L) (formerly 4(K)) to codify the present practice of making payments to USF recipient companies quarterly, to reflect the fact that there are funding recipients other than local exchange carriers, and otherwise to clarify the subsection.

IX. MISCELLANEOUS CHANGES

We have changed all references to Verizon or Verizon Maine to Northern New England Telephone Operations LLC, referred to in the rule generally as FairPoint NNE. We also have provided a definition of that entity in Chapter 285, Section 1(C) and 288, Section 2(F). We have eliminated the definition of Verizon now in Chapter 288, Section 2(M). Most of the references in Chapter 288 to Verizon (or FairPoint NNE) are in connection with using those entities as the benchmark for the determination of comparative rate levels for rural incumbent local exchange carriers (rural ILECs) a/k/a independent telephone companies. Thus, the reference to FairPoint NNE is intended only as a reference to the entity that replaced Verizon Maine and not to any of the several rural ILECs owned by FairPoint Communications.

Finally, we have amended several provisions in both chapters to replace "Director of Finance" with "Director of Telephone and Water Utility Industries."

X. FISCAL IMPACT

In accordance with 5 M.R.S.A. § 8057-A(1), the Notice of Rulemaking invited all interested persons to comment on the fiscal impact of the proposed amendments to the Rules. The Notice stated that the fiscal impact of the proposed Rule was expected to be minimal. No persons filed comments. We find that there is no fiscal impact from the amendments to Chapters 285 and 288.

XI. ORDERING PARAGRAPHS

Accordingly, we

1. ADOPT the amendments to Chapter 285, Maine Telecommunications Education Access Fund, and Chapter 288, Maine Universal Service Fund, that are included in the amended rules attached to this Order;

2. ORDER the Administrative Director send a copy of this Order and the attached rules to:

   a. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5);

   b. The Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

3. ORDER the Administrative Director to send notice of this Order and amended rules to:

   a. All telephone utilities in the State;

   b. All persons who filed comments in this rulemaking;

   c. the Public Advocate;

   d. All persons who have filed with the Commission within the past year a written request for any Notice of Rulemaking.

   e. TracFone, Time Warner Cable Information Services (Maine), LLC and Comcast IP Phone II, LLC

Dated at Hallowell, Maine, this 2nd day of August, 2011.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Vafiades
Littell

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407

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1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.